shipper, owner and consignee of the goods covered by the said bill of lading and did not in any way, as contended by counsel, show that Lord Steamship Company S.A. had any title to or ownership of the said ship "Loon Sheng". There was no other evidence adduced on which the court could determine the true beneficial ownership of the ship within the meaning of the said section 3(4) of the U.K. Administration of the Justice Act, 1956.

As regards jurisdiction, I was of the view that section 1 of the U.K. Administration of Justice Act, 1956, which was referred to by counsel for the plaintiffs, merely defines the Admiralty jurisdiction of the High Court. That section, however, must be read in conjunction with section 3 of the said Act which prescribed the mode of exercise of Admiralty jurisdiction, and as regards section 3(4) of the said Act I would, with respect, agree with the views of the Singapore Court of Appeal that for a ship to be liable to arrest it must be the ship in connection with which the claim made in the action arose, if at the time when the action was brought it was the property of the defendant to the action, the defendant being the person who would be liable on the claim in an action *in personam* and who was either the owner or charterer of or in possession or control of the ship at the time when the cause of action arose. Alternatively, a ship liable to arrest could be any other ship which, at the time when the action is brought, is the property of the person liable *in personam* and who, at the time when the cause of action arose, was either the owner or charterer of or in possession or in control of, the ship in connection with which the claim arose.

Applying the above principles to the facts of this case I found, as stated above, that there was no evidence adduced which showed that the true beneficial owners of the "Loon Sheng" were Lord Steamship Company S.A. Indeed, it was not disputed that the said ship "Loon Sheng" was at the relevant times registered in the name of and owned by Mensa (Panama) S.A. As it was Lord Steamship S.A. and not the defendants who would be liable on the plaintiffs' claim in an action *in personam*, it was my judgment that the plaintiffs were not entitled to invoke the Admiralty jurisdiction of the High Court against the "Loon Sheng" which, on the undisputed facts, was not beneficially owned at the date of the issue of the writ by Lord Steamship Company S.A. who were liable *in personam* on this claim. In the result, I allowed the said notice of motion and made an order in terms of prayer I thereof, namely that the said writ of summons and all subsequent proceedings herein be set aside.

As regards damages, it has been held by the Privy Council in the case of *The "Strathnaver"*(4) that in the absence of proof of *mala fides* or malicious negligence, the court ought not to give damages against the parties arresting a ship. In this case, I found that there was no evidence that the said vessel "Loon Sheng" was arrested by reason of bad faith or gross negligence on the part of the plaintiffs and I, therefore, did not order any damages in favour of the defendants. I also ordered that the costs of the said notice of motion be taxed and paid by the plaintiffs to the defendants, but as a vessel cannot be re-arrested by the same party for the same cause of action, I also made, in the circumstances of this case, an order that the plaintiffs be at liberty to file fresh proceedings *in rem* and to re-arrest the said ship or vessel "Loon Sheng". (See *Roscoe's* Admiralty Practice (5th Ed.) at page 267).

Order accordingly.

Solicitors: *Kean Chye & Sivalingam; Wong-Chooi & Mohd. Nor.*

RAJA KHAIRULZAMAN SHAH BIN RAJA AZIDDIN & ORS. v. ZAMAN INDAH SDN. BHD.

[O.C.J. (Abdoolcader J.) November 27 and December 19, 1978]
[Ipoh — Civil Suit No. 444 of 1978]

Company Law — Shares — Further call-up on shares — Shares already paid for — Application for immediate entry on register as holders of shares — Whether members/shareholders entitled to — Entry to be made only on completion of allotment — Companies Act, 1965, ss. 54, 56(1)(a) & 107.

The plaintiffs in this case were shareholders and members of the defendant company. Pursuant to the Articles of Association of the company which provided for the issue of shares as and when the need arose, a call-up of shares was made, payment of which was to be made on December 31, 1978. This was the third call for an additional 10 per cent of the shares applied for. The plaintiffs having paid the respective sums on this third call, demanded the issue of share certificates within 48 hours and threatened legal proceedings in default. The share certificates were not issued and the plaintiffs on November 21, 1978 issued a writ and applied by motion for an order for the said shares to be entered into the Register of Shareholders and that the defendants be restrained from convening an Extraordinary General Meeting for December 2, 1978 or any other meetings until the shares have been so registered.

Held, dismissing the plaintiffs' claim: the allotments to all the shareholders on the third call would be made only on or after December 31, 1978 when the allotment of shares on the third call was complete; and no right could accrue before that date for the plaintiffs or any other shareholder for that matter to demand as of right that they be entered on the register of members immediately upon payment in respect of the shares paid for or that they be issued with share certificates forthwith in view of the specific provisions of sections 54 and 107 of the Companies Act.

[Editorial Note: The plaintiffs' appeal to the Federal Court (Notice of Appeal filed on December 11, 1978) was later abandoned.]

Cases referred to:-

(1) *Lock* v. *Queensland Investment and Land Mortgage Co.* [1897] 1 Ch. 397, 407; [1896] A.C. 461.

(2) *Spitzel* v. *Chinese Corporation Ltd.* [1899] 80 L.T. 347.

(3) *Clarke's Case* (1878) 8 Ch. D. 635.

CIVIL SUIT.

Colin Clark for the plaintiffs.

A.I. Raj for the defendants.

Cur. Adv. Vult.

Abdoolcader J.: The plaintiffs are shareholders in the defendant company and are already on the register of members. When the company was incorporated the directors agreed that the shares would be issued as and when the need arose for additional capital and the allocation of shares was to be made in

accordance with applications made immediately after the incorporation of the company. The plaintiffs accordingly applied for and were allocated 90,000 shares to the 1st plaintiff and 15,000 shares each to the 2nd and 3rd plaintiffs. There were two previous calls and at a directors' meeting on November 2, 1978 it was resolved that the company call up a further 10 per cent of the shares applied for and that 'the payment of the additional 10 per cent call-up on the shares applied for be made on December 31, 1978.' It was also resolved at that meeting to convene an Extraordinary General Meeting of the Company on December 2, 1978 in connection with proposed amendments to the Company's Articles of Association.

The 1st plaintiff paid $9,000 on November 14, 1978 on this third call for an additional 10 per cent of his share entitlement and the 2nd and 3rd plaintiffs each paid $1,500 on November 15 for an additional 10 per cent on theirs, and then on November 16 through their solicitors wrote to the company demanding the issue of share certificates within 48 hours in respect of the shares paid for by them on this call, threatening legal proceedings in default. The share certificates were not issued and the plaintiffs on November 21, 1978 issued the writ in these proceedings and on the same day applied by motion for an order that '(a) the defendants so forthwith (*sic*) cause to be entered into the register of shareholders of the defendant company the shares called for and paid for by the plaintiffs; (b) Alternatively, that the defendants be restrained by interim injunction from convening an Extraordinary General Meeting for the 2nd day of December, 1978 or any other general meetings until such time when the plaintiffs shares called for and paid for have been registered in the register of shareholders of the defendant company' and of course for costs.

The application was of course in respect of the allotment of shares by virtue of the third call and was no doubt made for the purposes of ensuring the necessary voting strength of the plaintiffs at the Extraordinary General Meeting to be held on December 2, 1978. At the outset of the hearing of the motion on November 27, 1978, counsel for the plaintiffs *suo motu* conceded that it was only in very rare and exceptional circumstances that a mandatory injunction in terms of prayer (a) of the application would be granted in interlocutory proceedings and indicated that he was primarily relying on the relief sought in prayer (b) thereof. The short point for consideration and determination in this matter was whether on payment made by them for the shares to be allotted to them on the third call they were entitled to be immediately entered on the register of members as the holders of such shares which they had paid for or whether such entry would only be made on or after December 31, 1978 when the allotment of shares on the third call was complete. It is interesting to note that immediately after payment made by the plaintiffs they demanded of the company not entry on the register of members in respect of the shares paid for but only the issue of share certificates in respect thereof.

Counsel for the plaintiffs in his submission before me repeatedly contended that as soon as the call was paid, the plaintiffs were entitled to be registered and to be on the register of shareholders, as he put it, because the contract of allotment was complete but conceded in answer to a query by me that he could not show any authority on this proposition that the plaintiffs had the right to be so registered immediately on payment therefor.

Article 11 of the Company's Articles of Association deals with calls on shares and provides that each member shall be liable to pay the amount of every call made upon him at the times and places appointed by the directors. Section 56(1)(a) of the Companies Act, 1965 provides that a company if so authorised by its articles may make arrangements on the issue of shares for varying the amounts and times of payment of calls as between shareholders. Paragraph 18 of Table A set out in the Fourth Schedule of the Companies Act (which applies to the company by virtue of Article 1 of its Articles of Association) provides that the directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment. Paragraph 17 of Table A provides that any sum which becomes payable on allotment shall be deemed to be a call duly made and payable on the date on which by the terms of the issue the same becomes payable.

Section 107(1) of the Companies Act prescribes the duties of a company with respect to the issue of certificates and provides that this shall be done within two months after the allotment of any of its shares, with a default penalty for non-compliance therewith prescribed by subsection (2) thereof. Section 107(3) stipulates that if any company on which a notice has been served requiring the company to make good any default in complying with this section fails to make good the default within 10 days after the service of the notice, the court may on the application of the person entitled to have the certificates delivered to him make an order directing the company and any officer of the company to make good the default within a specified time and award costs against the company and any defaulting officer.

It is clear from the provisions of section 107 of the Companies Act that the appropriate share certificates have to be completed and ready for delivery within two months after the allotment of shares and that any person aggrieved can have recourse to court under the provisions of subsection (3) of that section when non-compliance still persists 10 days after service of a notice requiring the company to deliver the requisite certificates. As I have already pointed out the plaintiffs through their solicitors only made a demand for the appropriate share certificates almost immediately after paying for the shares on the third call and it is only in the application for injunction that they have raised for the first time the question of their right to be registered in the register of members as holders of the shares in question.

The plaintiffs by a letter from the secretary to the company dated November 14, 1978 were asked to send in their cheques for the amount of their entitlement on or before December 31, 1978 in respect

of the call-up for 10 per cent of the share capital applied for. The allotments on this third call would, in my view, only be made on December 31, 1978 as the time specified for payment by the directors in their resolution of November 2, 1978, and the right of members to be put on the register in respect of the shares allotted would only accrue on or after that date. If the shares were to be issued as and when payment therefor was received from individual members they would not rank *pari passu* and might well create disparity in respect of the rights of members *inter se*.

To the extent to which money is paid in advance on calls, the shareholder is a creditor of the company (*Lock* v. *Queensland Investment and Land Mortgage Co.*[1] (at p. 407 *per* Kay L.J.; affd. [1896] A.C. 461)), but he is not an ordinary creditor, for he cannot demand repayment of the money so paid, and the company cannot repay it unless the articles so provide (*ibid.*). The legal effect of an allotment, which is an appropriation to a person of a certain number of shares but not necessarily of any specific shares, depends on circumstances, for it may be an offer of shares to the allottee or an acceptance of an application for shares by him, but an allotment of itself does not necessarily create the status of membership, even when the contract to take the shares is complete (*Spitzel* v. *Chinese Corporation Limited*[2]). A resolution to allot shares is not necessarily the issue of them, as the term 'issue' would appear to mean allotment followed by registration or possibly by some other act, distinct from allotment, whereby the title of the allottee becomes complete (*Clarke's Case*[3]).

Section 54 of the Companies Act provides for a return as to allotments, and subsection (1) thereof enacts that where a company makes any allotment of its shares it shall within one month thereafter lodge with the Registrar of Companies a return of the allotments specifying the particulars therein prescribed. The allotment made on the third call in this case was not only to the plaintiffs but to all the other shareholders as well. Section 54 prescribes one return of all the allotments made when a company makes an allotment of its shares. The return of the allotment is to be made within one month thereafter and if there is to be registration of the allotment made to him every time any member pays for the shares to be allotted to him before the date specified in the directors' resolution, I cannot see how there can be compliance with the provisions of section 54 unless returns are submitted every time a payment is made on pain of the default penalty provided by subsection (7) of that section. It would accordingly seem clear to me that the allotments to all the shareholders on the third call will be made only on December 31, 1978 and no right can accrue before that date for the plaintiffs or any other shareholder for that matter to demand as of right that they be entered on the register of members immediately upon payment in respect of the shares paid for or that they be issued with share certificates forthwith in view of the specific provisions of sections 54 and 107 of the Companies Act.

In the circumstances and in view of the law and statutory provisions I have discussed I cannot see that the plaintiffs have the right or are entitled to demand as of right that they be entered on the register of members in respect of the shares they paid for on the third call by the company or that they be issued the share certificates therefor immediately on payment being made. If they are not so entitled there is no right to be protected and they cannot therefore claim relief by way of the injunction sought, and consequentially the matter of *mala fides* allegedly attributed by the plaintiffs to the other three directors of the company does not arise for consideration.

I accordingly dismissed the application with costs.

I have already indicated that the primary purpose of the application before me was to stop the Extraordinary General Meeting scheduled for December 2, 1978 or any other general meetings until the plaintiffs were registered in respect of the shares paid for by them on the third call and, in any event, the plaintiffs' grievance would terminate on December 31, 1978 when the allotment to all the shareholders on the third call would be complete and finalised. On December 11, 1978, however, the plaintiffs filed a notice of appeal against my decision dismissing the application which in the circumstances I can only consider an exercise in futility as I cannot see what effective order or relief they could expect to obtain on appeal in respect of this application, assuming for a moment they succeed in the appeal, as the *raison d'etre* and the very purpose of the application would have been long lost and spent by the time the appeal is heard. But then the plaintiffs who are no doubt properly advised perhaps best know what else they can hope to achieve as a result apart from a *brutum fulmen* at the most if at all.

Claim dismissed.

Solicitors: *Concisom & Clark; Kean Chye & Sivalingam.*

RE APPLICATION BY HAMID BIN HASSAN; HAMID BIN HASSAN v. RETURNING OFFICER, KARAK & ORS.

[O.C.J. (Vohrah J.) January 8, 1979]

[Raub — Originating Motion No. 1 of 1979]

Election — Application to quash decision of Returning Officer — Mandamus to uphold objections — Ex parte application — Senior Federal Counsel allowed to appear as amicus curiae — Discretion of court — Remedies given by election legislation not exhausted — Elections (Conduct of Elections) Regulations, 1959, reg. 7 — Election Offences Act, 1954, s. 32(b).

Administrative Law — Application for certiorari to quash decisions of Returning Officer in election — Mandamus to uphold objections made — Discretion of court — Remedies given by election legislation not exhausted — Application dismissed.

In this case the applicant applied (a) for an order of *certiorari* to quash the decision of the Returning Officer overruling the objections to the nomination of certain candidates at an election (b) for an order of *mandamus* to uphold the objections. The applicant had not exhausted his remedies under the Election Offences Act, 1954 for the avoidance of the election in an election petition.